

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

UNITED STATES DISTRICT COURT  
FOR THE STATE OF VERMONT

2022 OCT 18 PM 4:27

LINDA LUXENBERG and  
KELCEY LUXENBUERG, as Guardians and next  
best friends of JOHN DOE; and  
LINDA LUXENBERG, for herself,  
Plaintiffs,

CLERK  
BY EM  
DEPUTY CLERK

v.

2:22-cv-188

VERMONT DEPARTMENT OF DISABILITIES,  
AGING AND INDEPENDENT LIVING;  
MONICA WHITE, in her official and individual  
capacities; JENNIFER GARABEDIAN, in her  
official and individual capacities; WASHINGTON  
COUNTY MENTAL HEALTH SERVICES INC.;  
MARY MOULTON, in her official and individual,  
Defendants.

**PLAINTIFF'S MOTION TO PROCEED UNDER A PSEUDONYM**

NOW COMES Plaintiff, John Doe, by and through his attorneys Costello, Valente & Gentry, P.C., and, pursuant to F.R.C.P. 10(a), moves this Honorable Court to permit Plaintiff, John Doe, to proceed in the above captioned matter under a pseudonym for the reasons and on the grounds set forth in his Memorandum.

**MEMORANDUM**

This is an action for violation of Constitutional, statutory and common law rights as a result of State and private agencies abuse and neglect of Plaintiff, an adult with disabilities under guardianship residing in Vermont. Plaintiff requests permission to proceed anonymously to protect his safety and the significant privacy interests implicated by this suit.

F.R.C.P. 10(a) requires that the "title of the action shall include the names of all the parties [...]." However, courts have allowed plaintiffs to proceed under a pseudonym when a balancing test weighing the interests of the plaintiff against that of the defendants and the public

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demonstrates that proceeding anonymously is appropriate. *See Sealed Plaintiff v. Sealed Defendant #1*, 537 F.3d 185 (2d Cir. 2008). There, the Second Circuit ruled that in determining whether a party is permitted to proceed pseudonymously, the movant must demonstrate that the balancing of the following non exhaustive factors weighs in their interest:

- (1) Whether the litigation involves matters that are highly sensitive and of a personal nature;
- (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties;
- (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity;
- (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure;
- (5) whether the suit is challenging the actions of the government or that of private parties;
- (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously;
- (7) whether the plaintiff's identity has thus far been kept confidential;
- (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity;
- (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and
- (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

*Id* at 190 (internal citations omitted).

Based on these factors, Plaintiff should be allowed to proceed under a pseudonym.

Plaintiff's claims are highly sensitive and personal as they revolve around his disability services. Litigation will necessarily discuss in detail Plaintiff's medical conditions, medical needs and experiences, and his home, all of which involve highly sensitive, private information of an intimate personal nature.

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Plaintiff is at risk of retaliation. He is still receiving services from Defendants and staff of Defendants and will need disability services for the rest of his life. The nature of Plaintiff's claims in this lawsuit could affect the quality and nature of those service in the future if his name is associated with this lawsuit resulting in great risk of physical harm to himself and emotion harm to his family.

Plaintiff, Doe, is particularly vulnerable because he will be relying on constant care for his disabilities for the rest of his life. His name being public with this case could negatively affect the treatment and care he receives from others in the future. Further, he is particularly susceptible to exploitation due to his vulnerability and disclosure of his identity could publicize his vulnerability.

Additionally, there is no prejudice to Defendants if Plaintiff proceeds under a pseudonym. Defendants are the State and private entities who provide critical medical services to Vermonters with disabilities. The very nature of their employ provides for a level of confidentiality to protect the privacy rights of those they serve, including Plaintiff Doe. Further, while any action against the state will proceed in the public domain there is no necessity that Plaintiff's name be attached to this legal matter so that a fair and just result may be reached by the Court or be used for any future public or legislative interest.

Finally, there exists no alternative avenue for Plaintiff to seek anonymity in this proceeding. The federal rule allows for Plaintiff's to proceed under a pseudonym in specific instances so that a Plaintiff does not have to weigh their privacy privileges against seeking Court intervention when it is necessary. Plaintiff respectfully submits that the need for anonymity in this matter greatly outweighs the interest of the Defendants and the public and it will not cause any prejudice to the Defendants nor public interest in this matter.

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**Conclusion**

WHEREFORE, Plaintiff moves the Court to Grant the instant Motion and allow him to pursue this Complaint using the pseudonym "John Doe."

DATED at Brattleboro, County of Windham, and State of Vermont, this 18th day of October, 2022.

John Doe  
Plaintiff

  
By: /s/ Zachary Hozid  
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